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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,487

03/09/2004

Yuichi Ueda

MM8844US

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7590

04/27/2007

KUSNER & JAFFE

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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

04/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/796,487

Applicant(s)

UEDA, YUICHI

Examiner

Gregory W. Adams

Art Unit

3652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee, under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2 and 4-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


GENE G. CRAWFORD
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: As was noted in the Feb. 15, 2007 office action the claims could have been finally rejected had they been entered in the earlier application. The final rejection is proper and maintained.

With respect to claims 2, 5 & 6, Applicant argues that the cited prior art does not disclose use of a rectangular pipe. Claims 2, 5 & 6 recite "rectangular pipes that form", i.e. a product by process claim. In this case, the cited prior art discloses the product applicant claims including rectangular pipes to form a running truck body and poles. Applicant is respectfully reminded that in a product-by-process claim patentability of a product does not depend on its method of production wherein determination of patentability is based on the product itself. MPEP 2113. In that case, we look at the finished product as claimed by Applicant to see whether the prior art meets the product by process claim limitation. In this case, the cited prior art discloses rectangular running truck body and poles, and the parts are connected to form the apparatus in accordance with claims 2, 5 & 6. Thus, the cited prior art discloses the finished product and in accordance with MPEP 2113 used rectangular pipes to form the components.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "rectangular cross-sectional configuration" is not the same as "a rectangular pipes that form" (e.g. claim 1, line 17)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). However, assuming Applicant placed the claims in proper form to recite a rectangular cross-section Brown for example discloses a rectangular cross-sectional shaped running-truck body and poles. The Examiner appreciates the Applicants explanation of the benefits of the features claimed but evidence of secondary considerations is considered when submitted in proper affidavit form.

Central is relative inasmuch as without a frame of reference "central" is merely a label that does not inform on location. For example, within a two-lane highway for example, a centerline separates the two lanes and each lane will have a unique center lane. And a centerline in a X-Y-Z space may be centered in any or all three coordinate axes. The Examiner notes "central position" discussion in paragraph [0031] of Applicants specification which was not claimed to presumably prevent too narrow of construction. But this does not define a centerline between two objects, and claims 2, 5 & 6 merely claim a "central position" which is equivalent to a portion within a portion. In other words, two central portions could overlap without their centerlines being coplanar.

In this case it would be better to recite --an aisle having a first dimension in a Y direction such that said first dimension has a center line in a middle of said first dimension, said aisle center line coplanar with a running truck body center line and coplanar with raising and lowering poles center line, said running truck body defining said running truck body center line at a geometric center of a rectangle cross-section in said Y direction, and said raising and lowering poles defining said raising and lowering poles center line as a geometric center of a rectangle shape in said Y direction, said aisle center line, said running truck body center line and said raising and lowering pole center line being coplanar during travel in an X direction transverse to said Y direction--. It goes without saying that incorporation of this language would necessitate a further consideration and/or search.

With respect to claims 4 & 7-11, Applicants arguments are not persuasive. The cited prior art discloses the limitations as noted above..